

03-128

12

Frank Stilwell

RECEIVED

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ORIGINAL

Federal Communications Commission
Office of the Secretary**From:** Jo Reese [Jo@ainw.com]**Sent:** Tuesday, February 17, 2004 4:20**To:** Jeffrey Steinberg**Cc:** Frank Stilwell**Subject:** Ex Parte for ACRA January Letter

Jeff, I submitted the attached files as an ex parte communication on Docket WT 03-128, but have not yet seen this posted on the FCC's Electronic Filing Comment posting. I sent this via Federal Express on February 10 to Ms. Dortch at the East Hampton Drive, Capitol Heights address.

I am writing to you because I am not sure if this was ample time for this to get into the FCC's system. Please let me know if I need to do anything more to complete this filing. Thanks very much!

Jo Reese
Chair, ACRA Cell Tower Subcommittee

Jo Reese, M.A. R.P.A.
VP/Senior Archaeologist
Archaeological Investigations Northwest, Inc.
2632 SE 162nd Avenue
Portland, Oregon 97236
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From: Jeffrey Steinberg [mailto:Jeffrey.Steinberg@fcc.gov]**Sent:** Wednesday, January 28, 2004 11:25 AM**To:** Frank Stilwell; Jo Reese**Subject:** RE: Submittal for TWG 1/29 Meeting

You also need to include the docket number, WT 03-128. I would suggest a one-sentence cover letter addressed to the Secretary of the Commission, Marlene H. Dortch, stating, "Attached is an ex parte communication in Docket No. WT 03-128." If you have any questions, don't hesitate to contact Frank or me.

-----Original Message-----

From: Frank Stilwell**Sent:** Wednesday, January 28, 2004 2:11 PM**To:** 'Jo Reese'**Cc:** Jeffrey Steinberg**Subject:** RE: Submittal for TWG 1/29 Meeting

Hello Jo,

You will need to file your letter with the Secretary's Office, indicating that it is an ex parte communication (2 copies). Below is the address information. Take care and have a nice afternoon.

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-----Original Message-----

From: Jo Reese [mailto:Jo@ainw.com]

Sent: Wednesday, January 28, 2004 5:10 AM

To: charlene vaughn; esanderson@preservation.RI.gov; schamu@sso.org; Frank Stilwell; Jeffrey Steinberg; Amy Pike

Cc: Christopher Dore

Subject: Submittal for TWG 1/29 Meeting

I have been discussing a proposal within ACRA and among others of the TWG that feels a bit light weight but that I hope could gain support at the meeting this Thursday. I am sending it off to you now, so that you may have an opportunity to consider my idea. It is presented at the end of my memo (the Word document), and is, in essence a suggestion that IF Secretary-qualified professionals are used, the level of work be reduced to identify only National Register-eligible properties that may be adversely effected or on which there may be no adverse effect. I have discussed this with Nancy Schamu and Ted Sanderson.

I look forward to seeing you on Thursday

Jo
Chair
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2/20/2004

February 9, 2004

Marlene H. Dortch
Secretary of the Commission
Federal Communications Commission
Washington, D C.

C/O
9300 East Hampton Drive
Capitol Heights, MD 20743

Re Docket WT 03-128
Nationwide Programmatic Agreement Regarding Section 106 NHPA

Dear Ms. Dortch

Attached (three pages) is an ex parte communication in Docket No. WT 03-128, which I am providing to you on behalf of the American Cultural Resources Association.

Sincerely,

Jo Reese, Chair
ACRA Cell Tower Subcommittee

Attachment

AMERICAN CULTURAL RESOURCES ASSOCIATION
6150 East Ponce de Leon Avenue
Stone Mountain, Georgia 30083

MEMO

Date: January 27, 2004

To Jeffrey Steinberg and Frank Stilwell, WTB-Federal Communications Commission
Charlene Vaughn, Advisory Council on Historic Preservation
Nancy Miller Schamu, National Council of State Historic Preservation Offices

From: Jo Reese, Cell Tower Subcommittee Chair, American Cultural Resources Association

Re. Draft Nationwide Programmatic Agreement
Comments for Telecommunications Working Group Meeting January 29, 2004

On behalf of the American Cultural Resources Association (ACRA), I extend my appreciation for the opportunity to provide written comments to aid in working on continuing disagreements among members of the TWG regarding the Nationwide Programmatic Agreement Review of Effects on Historic Properties for Undertakings (PA) that is under consideration by the Federal Communications Commission, Advisory Council on Historic Preservation, and the National Council of State Historic Preservation Offices

The objective of Section 106 of the National Historic Preservation Act is to protect significant historic properties, and the PA is intended to provide a clearly understood process that identifies these important resources and considers the effects cellular facilities may have on them so that the effects may be addressed. This acknowledges that both historic properties and cellular facilities are important to the Nation.

Recently, comments have been submitted to the Council, the FCC, and the NCSHPO, that suggest the burden of identifying significant historic resources, assessing the effect the cellular facility may have on them, and providing mitigation of an adverse effect has been disproportionate to the undertaking itself. The PA has addressed this, but there are ways to reduce the level of effort, if compromise can be made.

Representatives Richard Pombo and George Radanovich have, in their November 26, 2003, letter, implied that Section 106 should only address effects upon those resources that have been listed in the National Register of Historic Places or that have been determined eligible by the Keeper of the Register. During the past two decades, however, significant resources have not been placed on the National Register because the rules allow consideration of the effects of undertakings without spending taxpayers' money to process the nomination. Federal agencies have *saved the taxpayers money by not submitting nominations to the Keeper.*

I hope that the TWG can acknowledge that in the past, National Register-eligible resources have been inventoried but have not been nominated, and concede that there are significant resources that deserve recognition and protection but that have not been noted in the records. I offer the following proposal that has the objective of recognizing these significant resources so that impacts to them by a cellular facility can be reduced or avoided.

The level of work would be reduced to identify only those properties that would be eligible for listing in the National Register and on which the undertaking would have either no effect or the effect would not be adverse, *provided that* the study be done by personnel who meet the professional qualifications standards of the Secretary of Interior. The reporting requirements could be shortened, the cost would be reduced, and this would address concerns that non-

eligible resources are getting documented at the expense of the cellular and tower industry. By relying on those who are ready to submit their credentials for review by the SHPOs, the SHPO would accept the work of these professionals. The SHPO can then focus on those relatively few proposed facilities where there is potential for an adverse effect, working to minimize impacts.

I am hopeful that this proposed concept may be addressed during the present review period of the PA. I respectfully submit that this would have as an outcome the reduction of the level of work and would also provide consideration of potential impacts to archaeological sites, historic buildings and features, and traditional cultural properties in a timely manner.

CC: Christopher D Dore, President, ACRA
Tom Wheaton, Executive Director, ACRA
ACRA Cell Tower Subcommittee members

Contact information for Jo Reese

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www.ACRA-CRM.org

(JR: ACRA NPA comments Jan2704)

Draft Nationwide Programmatic Agreement dated December 6, 2002
ACRA Comments

(Pages that have been modified or where comments have been placed are being sent via fax. These pages are: 1, 3-5, 7-25 and three pages in the submission forms.)

Comment 1: ACRA appreciates including reference to using experienced, qualified professionals in the Whereas clauses and elsewhere in the PA.

Comment 2 Sections I and II. Minor changes or additions are suggested for these sections.

Comment 3 Section III. A. 1. ACRA recommends replacement of Exemption 1 with its preferred wording as presented via e-mail December 15, 2002.

Comment 4. Section III. A. 2. Exemptions are designed to allow construction in areas where there is a low likelihood of adversely affecting an historic property. Because archaeological resources have been recorded in areas that would be covered by this exemption, this exemption, related to archaeological potential, is problematic. In addition, some disturbance, such as plowing, may not compromise the integrity of an archaeological site. Because information about site locations is readily available through SHPO files and it would be fairly easy to obtain data in order to ensure that such a resource is not presently located where a facility is planned, if Exemption 2 is retained, we recommend modification of this exemption. At a minimum, the following is recommended to reference to an exception to this exemption where archaeological sites are already known. Add the following prior to the last sentence.
“, except where an archaeological site has already been recorded ”

Comment 5 Section III A. 5. Concerns have already voiced at the December 10 meeting about Exemption 5 which exempts facilities—paraphrasing here—placed within 200 feet of the right-of-way of transmission lines and their facilities, interstate highways, and passenger railway lines. These three types of existing alignments along which the cell towers would be exempted from review are quite often themselves historic properties. Another reason for serious concern is that such corridors are commonly alongside other historic properties such as historic districts, and archaeological sites have often been recorded in these areas. In addition to the existing exceptions to the exemption noted in the draft—which can be grouped as exception 1, two others are recommended if this exemption will be retained:

2. The existing utility transmission line and associated structures, or highway, or railroad previously has been determined eligible for listing in the NRHP or has been considered eligible by the SHPO, or

3. The proposed cellular facility will be placed on or immediately adjacent to a presently recorded archaeological resource which either has been found to be eligible for listing in the NRHP or has not been evaluated

Comment 6 Section IV. Move VII. F. 2, and place it after E in Section IV. The guidance for consultation with Tribes on non-reservation lands is appreciated

Comment 7 Section V. Move VII. F. 1, and place it as the introductory paragraph in Section V. It would be appropriate to rename this section “Identification of Consulting Parties and Public Participation,” as discussed at the December 10 TWG meeting

Comment 8 Section IV. J. Confidentiality with Tribes related to TCPs, we agree with the Council’s preferred working in Footnote 11

Comment 9 Section VI., General Comment This section would be improved with some reorganization Move Section C to right after the opening paragraph, which would be followed by A, B, and D (with further modifications).

Comment 10 Section VI. A 3. ACRA has serious concerns with this paragraph. It reads as though it gives an exemption, yet the other parts of this section, which address identification of potentially significant archaeological resources, suggest otherwise. Also, the paragraph's statement of an "alternative policy regarding the identification and evaluation of archaeological resources.." is very unclear This paragraph does not streamline the process, as it requires an additional step—where the SHPO would tell the applicant that a survey was, indeed, necessary—and the process for this is not outlined This deviates from the Section 106 process, yet is not outlined Since the level of work needed to identify significant archaeological sites is recognized already in SHPO guidelines with which archaeologists are already familiar, ACRA recommends that this paragraph be deleted

Comment 11: Section VI. A. 4 ACRA recommends deleting paragraph 4, as it is confusing and does not streamline the process The sentence has the procedures backwards, and is unnecessary

Comment 12: Section VI A 5 This could be deleted, as it relates to Exemption 7.

Comment 13 Section VI. B. 1 Clarification of the APE, as noted in this section, and the consistency which will result, is appreciated. It recognizes a maximum, within which the APE can be reduced where there are constraints to the visibility, which are appropriate parameters

Comment 14 Section VI. B. 1 The PA recommends that if there is disagreement regarding the APE, that this be noted to the applicant within 10 days of submittal to the SHPO. This will assist with streamlining the process, and if possible, this should be retained

Comment 15 Section VI B 6 Can this be reworded into an exemption and moved to III? This would be an Exemption for collocations on towers with Section 106 clearance but not exempted from review under the Collocation PA Also, this paragraph is very vague. If retained, the process needs to be outlined because it is not clear what gets submitted, if anything, nor the timeline.

Comment 16. Section VI. B 7 Agree with Footnote 16, that this should be deleted. However, this situation is absent in the determination of effects section of the Submittal formats—both CO and NT, and this should be integrated into those documents.

Comment 17 Section VI. B 8. This paragraph narrowly limits the types of 'above ground' resources which may be adversely effected, and the result would be that there would be "no effect" (or no adverse effect) if a tower was placed in the historic district of many towns; is this the intent? This seems too narrow, and is internally inconsistent within the paragraph It is inconsistent with the level of work outlined in the Submission requirements, which requires photographs of all buildings and structures 45 years old or older. I suggest that the following sentence be added, and recommend that it be the first of the series recognized for their potential to be effected: "Historic properties where the setting or visual elements are character-defining features "

Comment 18 Section VI. B 8 Agree with Footnote 17, that the last sentence be deleted

Comment 19 Section VI. B 9 Recommend that this paragraph be deleted (in agreement with Footnote 18) because the local government and zoning staff are not familiar with or lack expertise in Section 106, have other agendas and roles to fulfill, and are subject to other authority and pressures

Comment 20: Section VI. B 10. This could be deleted, as it is covered in Exemption 7.

Comment 21 Section VI. C As noted above, move this to the start of Section VI.

Comment 22: Section VI C 1 Recommend deletion of reference to “(3) a sample field investigation,” as this is not commonly used (no one I talked with had heard this phrase)

Comment 23. Section VI D 2 I have suggested some wording to clarify that this is specifically related to issues of eligibility, and to replace “property” with “resource” in this paragraph

Comment 24. Section VII A. 2 I recommend that reference to a 30-day review stand alone as its own paragraph This will help to clarify that this is an expedited review, including identification and eligibility assessments as well as effect determinations. The remainder of the present paragraph would become 3. The addition of five days for the SHPO to review comments forwarded by the Applicant should help to streamline the process, since it does not make it subject to another 30-day review period.

Comment 25 Section VII A 3 This section limits the time for re-submittals upon rejection by the SHPO due to deficiencies It is not clear why there would be a 60-day limit imposed on this, and it would be best to remove that from this section. In addition, I suggest an option whereby the submittal could be made to the Commission if the SHPO rejects it.

Comment 26 Section VII B In the mark-up, I have noted my suggestion to replace the word “dispute” with “disagreement” in this section, to align with the wording with the Section 106 regulations

Comment 27 Section VII B. 5 I believe this is redundant (see VI D. 2), and could be deleted.

Comment 28 Section VII. C 2 In the spirit of streamlining, I would like to insert the following option for informing the SHPO that they are beyond the 30-day review period. This would become (a), and the current (a), (b), and (c) would become, b1, b.2, and b.3.

(a) The Applicant shall provide the Commission with proof of receipt of its submittal to the SHPO (signature proof from Federal Express, UPS, certified or registered USPO mail, etc.) and notify the SHPO of Applicant's notice to the Commission. The Applicant can then proceed. *[Alternatively, after notification to the FCC and the SHPO, a few additional days could be added, if considered to be reasonable]*

Comment 29 Section VII E could be moved after VII C 3 , and would become C. 4. and C. 5

Comment 30 As noted earlier, Section VII F 1 could be moved to Section V.

Comment 31 As noted earlier, Section VII. F 2. could be moved to Section IV.

Comment 32. Section IX, is needed to address the Section 106 regulations related to inadvertent discovery This will be needed even more if there are exemptions for identification of archaeological sites In my mark-up, I have recommended some word changes needed for clarity, and to note that construction must cease while resource evaluation is underway.

Submitted on behalf of the American Cultural Resources Association
By Jo Reese, 12/21/02



American Cultural Resources Association
A Professional Business Organization

27 January 2004

Mr Jeffrey Steinberg
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re. Comments on Draft Nationwide Programmatic Agreement Regarding the Section 106
National Historic Preservation Act Review Process

Dear Mr. Steinberg

The American Cultural Resources Association (ACRA) appreciates the opportunity to provide its opinion and recommendations regarding the FCC's proposals to address the telecommunication industry's concerns related to the National Historic Preservation Act. Our representatives have provided advice, comments, and recommendations throughout the process of creating the currently proposed nationwide programmatic agreement, and continue to have ideas for consideration by the members of the Telecommunications Working Group

The proposal that ACRA is now submitting is intended to address the concerns of all participants in the programmatic agreement. We are hopeful that this and additional ideas may help if an impasse has occurred among the agencies and groups that are responsible for carrying out the cultural resource studies and reviews. On behalf of our organization, ACRA's Cell Tower Subcommittee offers the attached proposal.

Please feel free to contact me if you have any questions. My telephone number is 520 721.4309 and my e-mail is cdore@snicrm.com. You also may contact the Chair of ACRA's Cell Tower Subcommittee, Ms. Jo Reese, at 503 761 7705 or via e-mail at jo@amw.com. Thank you for your consideration.

Sincerely,

Christopher D. Dore, Ph.D., RPA
President

Frank Stilwell

From: Jo Reese [Jo@ainw.com]
Sent: Tuesday, February 17, 2004 4:27 PM
To: Jo Reese, Jeffrey Steinberg
Cc: Frank Stilwell
Subject: RE: Ex Parte for ACRA January

I apologize, but one of the three files that I just sent you had something appended to it that should not have been included. May I try this again? Disregard the previous three files, to keep the confusion to a minimum, and here are the correct ones.

Jo
ACRA

From: Jo Reese
Sent: Tuesday, February 17, 2004 1:20 PM
To: 'Jeffrey Steinberg'
Cc: Frank Stilwell
Subject: Ex Parte for ACRA January Letter

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2/20/2004

AMERICAN CULTURAL RESOURCES ASSOCIATION

MEMO

Date: January 27, 2004

To: Jeffrey Steinberg and Frank Stilwell, WTB-Federal Communications Commission
Charlene Vaughn, Advisory Council on Historic Preservation
Nancy Miller Schamu, National Conference of State Historic Preservation Officers

From: Jo Reese, Cell Tower Subcommittee Chair, American Cultural Resources Association

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Proposed Concept

The level of work would be reduced to identify only those properties that would be eligible for listing in the National Register and on which the undertaking would have either no affect or the affect would not be adverse, *provided that* the study be done by personnel who meet the professional qualifications standards of the Secretary of Interior. The reporting requirements could be shortened, the cost would be reduced, and this would address concerns that non-eligible resources are getting documented at the expense of the cellular and tower industry. By relying on those who are ready to submit their credentials for review by the SHPOs, each SHPO would accept the work of these professionals. The SHPO can then focus on those relatively few proposed facilities where there is potential for an adverse effect, and work with the cellular or tower applicant to minimize impacts

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CC Christopher D. Dore, President, ACRA
Tom Wheaton, Executive Director, ACRA
ACRA Cell Tower Subcommittee members

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Sincerely,

Christopher D. Dore, Ph.D., RPA
President